



**City of Rye, New York**

# **Debt Limit White Paper**

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## **Introduction**

At the direction of the City Manager, the City of Rye Finance Department performed a study of our charter bond provisions to determine if those provisions should be amended. This document summarizes the results of that study, and concludes with some preliminary issues for discussion should we consider amending or repealing the current charter bond provisions. Further information, discussion, and analysis may raise other issues or expand on those noted in this document.

## **Legal Debt Limits – New York State and City of Rye**

Section 34 of the Local Finance Law prohibits a city from requiring a permissive or mandatory public referendum on a bond resolution, unless that city has adopted a local law that allows such a referendum.

Section C21-9 of the City of Rye Charter does require that bond resolutions:

- In excess of 10% of the average gross annual budget for the preceding three years be subject to a mandatory referendum;
- More than 5% but less than 10% of the average gross annual budget for the preceding three years be subject to a permissive referendum, provided that the aggregate amount of the proposed bond issue and all outstanding bonds issued subject to permissive referendum do not exceed this 10% limit;
- Less than 5% of the average gross annual budget for the preceding three years are subject only to council vote, provided that the aggregate amount of the proposed issue and all outstanding bonds issued subject to council vote do not exceed this 5% limit; and,
- Are exempt if the bond proceeds will be used for the payment of judgments or claims, or compromised or settled claims against the city, or, for the payment of awards or sums payable by the city pursuant to a determination by a court, or an officer, body or agency in an administrative or quasi-judicial capacity, or, for obligations sold to the New York State Environmental Facilities Corporation or any successor thereto.

It was therefore a decision that the City of Rye made when it established its charter provision (§C21-9) to make certain bond resolutions subject to referendum. Had the City not adopted this provision, it would not be legal for us to hold a referendum on a bond resolution, and barring any other provision of the charter, all bond resolutions would be subject only to council vote. Assuming no new debt is authorized prior to year-end, at December 31, 2002 debt authorization will be limited to \$284,407 subject to council vote, and \$118,930 subject to permissive referendum.

Whether or not a city charter requires a referendum for bond resolutions, or otherwise sets limits on the amount of bonds that may be issued and/or outstanding at any given time, there is a limit,

known as the “constitutional debt limit”, imposed by New York State. Section 104<sup>1</sup> of the Local Finance Law limits the total amount of outstanding debt a city may have at any given time to 7% of the 5-year average full valuation. At December 31, 2001 the constitutional debt limit of the City of Rye was \$172,784,523 and the debt outstanding subject to that debt limit was \$11,340,000. This meant that at December 31, 2001, the City had exhausted 6.56% of its constitutional debt limit, and had a net debt contracting margin available of 93.44%.

## **Charter Bond Limitations – Other Cities in New York State**

A review was made concerning charter limitations on bond resolutions of other cities in New York State. Counties, towns, villages, school districts and other local governmental entities were not included in our survey, as different laws, rules and regulations govern their authority to issue bonds. It is also important to note that our survey did not include all cities in New York State due to the limitations inherent in attempting to contact each city and reviewing its charter. However, we believe that our inclusion of the six cities in Westchester County, combined with 18 others whose charter information was readily available on the Internet, provides a sufficient sample from which we can draw a general understanding of “typical” charter bond provisions.

Including the City of Rye, Westchester County has six cities. Interviews<sup>2</sup> with the finance officers of the five other cities revealed that four have no charter bond limits. The City of Mt. Vernon requires a mandatory referendum for any bond amounts in excess of \$750,000, except that no referendum is required for bonds to pay legal judgments, claims, settlements, or where the bonds are matching federal or state funding in a project.

A call to the Office of State Comptroller<sup>3</sup> and a call to the New York Conference of Mayors<sup>4</sup> revealed that neither organization maintains a list of New York State cities that have bonding limitations in their charter or code.

The charters of 19 New York State cities (one of them being Rye) may be found on the Internet, 17 of which are located on the site for General Code Publishers<sup>5</sup>, and 2 of which are located on the site for Municipal Code Corporation<sup>6</sup>. Excluding Rye, the charters of the remaining 18 cities revealed the following:

- 14 have no charter bonding limits
- City of Amsterdam – Bond resolutions are subject to permissive referendum, either by the public or as submitted by the City Council, except:

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<sup>1</sup> Section 104 of the Local Finance Law establishes different limits for the type of municipality (city, county, town, village, etc.) as well as different limits for cities by population size. The City of Rye falls under §104(b)(5), a city having a population of less than 125,000.

<sup>2</sup> Telephone interviews May 23 and 24, 2002.

<sup>3</sup> Telephone interview May 23, 2002 with Ms. Theresa Hunt, Office of State Comptroller.

<sup>4</sup> Telephone interview May 23, 2002 with Mr. Peter Baynes, New York Conference of Mayors.

<sup>5</sup> General Code Publishers (<http://www.generalcode.com/webcode2.html#newy>, accessed 5/24/02) contained the charter and codes for 17 cities: Albany, Amsterdam, Auburn, Batavia, Beacon, Buffalo, Cohoes, Geneva, Glen Cove, Ithaca, Kingston, Newburgh, Oneida, Oneonta, Rochester, Rye, and Troy).

<sup>6</sup> Municipal Code Corporation (<http://livepublish.municode.com/LivePublish/statelist.asp?state=32>, accessed 5/24/02) contained the charter and code for 2 cities: Rome and Tonawanda.

- Bonds with a proposed maturity of less than five years;
- Bonds used to pay legal judgments, claims, awards, settlements, etc.;
- Bonds used to provide for the construction or reconstruction of sewage treatment or disposal as required by the DEC.
- City of Beacon – Bond resolutions are subject to permissive referendum for amounts exceeding \$250,000, except:
  - Those used to fund capital improvements where more than 50% of the cost of the improvements will be levied by assessments upon properties benefited;
  - Those used to pay legal judgments, claims, awards, settlements, etc.;
  - Those used to provide for the construction or maintenance of sewer facilities or water pollution control facilities.
- City of Buffalo – Bond resolutions are subject to permissive referendum except for those issued to pay legal judgments, claims, awards, settlements, etc.
- City of Oneida – Bond resolutions are subject to mandatory referendum for amounts exceeding \$575,000, except:
  - Those used to pay legal judgments, claims, awards, settlements, etc.;
  - Those used to provide for the construction or maintenance of water or sewer facilities required to comply with environmental or health law;
  - Those used to provide for the construction of sanitary sewer facilities where special assessments will be levied against the benefited properties.

Section 105<sup>7</sup> of the Local Finance Law has a special provision for the cities of Buffalo, Rochester and Syracuse, extending their debt limits to exclude from the limitation any debt issued for a public improvement that will be repaid by special assessments. Section 105 further extends the debt limits for Buffalo and Rochester by an additional \$10 million above the Section 104 limit, and Syracuse by an additional \$5 million.

## **Bond Counsel Opinion**

Willkie Farr & Gallagher is the bond counsel for the City of Rye. Mr. Thomas Rothman, Esq. of that firm was asked<sup>8</sup> to review our charter bond provision and to provide his informal opinion on that section of our charter. Mr. Rothman replied that Rye is probably the wealthiest city in New York State, yet it is perhaps as well the most restrictive in terms of bond authorizations. He noted that our charter bond provision can be difficult to interpret, even for a legal expert, and that New York State already imposes a debt limit on cities within its jurisdiction. He further noted that we operate in a representative democracy, where our government representatives are elected to serve in our best interests, and through the power of vote we can express our satisfaction or dissatisfaction with their performance. Having a non-mandatory provision in our charter that limits their authority to issue bonds also limits their ability to govern us. If we did not have such a provision in our charter and were considering one, he would recommend against its adoption.

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<sup>7</sup> Opinion of the State Comptroller 90-23 provides guidance that the extended debt limitations of Buffalo, Rochester and Syracuse are aggregate limits, where any previously issued debt must be added to the proposed debt to determine the amount of debt margin exhausted.

<sup>8</sup> Telephone interview with Thomas Rothman, Esq., May 23, 2002.

Since the provision already exists, an attempt to remove it may be considered, and in reality would be, a reduction in the power of Rye City voters to directly decide the amount of debt they are willing to undertake. This is a public policy issue. Even if the provision is not removed, we may wish to consider simplifying or otherwise modifying it.

## **Conclusion**

Several issues for further discussion and analysis include:

1. New York State Local Finance Law imposes a limitation on debt.
2. There is no legal requirement for a city to adopt additional debt limitations, but does allow a city to do so as an option.
3. A referendum for a bond resolution would be illegal if we did not have our charter provision requiring one. If our charter provision did not exist, all debt issuance decisions would be made by council vote, subject to New York State debt limits.
4. There are very few cities that have charter bond limitations.
5. The wording of our charter bond provision is difficult for most people to understand.
6. We must add any previously issued and outstanding debt to the proposed issue to determine if the limit has been reached. Charter bond provisions of other cities consider only the proposed issue in determining if the limit has been reached.
7. Only two other cities in our study (Mt. Vernon and Oneida) require a mandatory referendum, and three (Amsterdam, Beacon, and Buffalo) require a permissive referendum.
8. Even some very important, perhaps critical bond resolutions (such as those for a fire pumper truck) may be subject to a referendum, permissive or mandatory.

We may wish to repeal our charter bond provision. If this is not a viable solution, we may wish to amend it as follows:

1. Remove the mandatory referendum requirement.
2. Establish one debt limit, above which the resolution would be subject to permissive referendum. We would recommend that the debt limit be set as a percentage of full valuation, much like the New York State limit.
3. Change the aggregate limit feature, so that the limit applies to each bond resolution or the aggregate total of bonds authorized in a fiscal year, and does not require us to add any previously issued debt.
4. Consider expanding our exceptions, perhaps to include public improvements whose cost is recovered by levies on the assessments of benefited properties, public improvements with a minimum percentage of matching federal, state, or other outside funds, etc.

Respectfully submitted,

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City Comptroller